

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
Alex Spiro (admitted *pro hac vice*)  
2 alexspiro@quinnemanuel.com  
51 Madison Avenue, 22nd Floor  
3 New York, New York 10010  
Telephone: (212) 849-7000

4 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
Robert M. Schwartz (Bar No. 117166)  
robertschwartz@quinnemanuel.com  
6 Michael T. Lifrak (Bar No. 210846)  
michaellifrak@quinnemanuel.com  
7 Jeanine M. Zalduendo (Bar No. 243374)  
jeaninezalduendo@quinnemanuel.com  
8 865 South Figueroa Street, 10th Floor  
Los Angeles, California 90017-2543  
9 Telephone: (213) 443-3000

10 *Attorneys for Defendant Elon Musk*

11  
12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**  
14

15 VERNON UNSWORTH,  
16 Plaintiff,  
17 vs.  
18 ELON MUSK,  
19 Defendant.

Case No. 2:18-cv-08048

Judge: Hon. Stephen V. Wilson

**DEFENDANT ELON MUSK'S  
STATEMENT OF  
UNCONTROVERTED FACTS AND  
CONCLUSIONS OF LAW IN  
SUPPORT OF HIS MOTION FOR  
SUMMARY JUDGMENT**

Complaint Filed: September 17, 2018  
Trial Date: December 2, 2019

Hearing Date: October 28, 2019  
Time: 1:30 p.m.  
Courtroom: 10A

Defendant Elon Musk respectfully submit this Statement of Uncontroverted Facts and Conclusions of Law in support of his Notice of Motion and Motion for Summary Judgment pursuant to Local Rule 56-1.

## **TABLE OF CONTENTS**

	<b>Page</b>
UNCONTROVERTED FACTS .....	2
A. The Thai Cave Rescue and Plaintiff’s Role .....	2
B. The Public Debate Over the Cave Rescue and Mr. Musk’s Involvement.....	6
C. Without Provocation, Mr. Unsworth Attacks Musk on CNN .....	18
D. Mr. Musk’s July 15, 2018 Tweets and Subsequent Apology .....	19
E. Mr. Musk Retains an Investigator who Reports On Mr. Unsworth. ....	24
F. Mr. Musk’s August 28, 2018 Tweet .....	27
G. The Investigator Reports More Detailed Findings to Birchall.....	28
H. Mr. Musk’s “Off-the-Record” Emails to BuzzFeed.....	30
I. Mr. Unsworth Sues.....	37
CONCLUSIONS OF LAW .....	38
A. APPLICABLE STANDARDS.....	38
B. BECAUSE MR. UNSWORTH IS A LIMITED PURPOSE PUBLIC FIGURE, A DEFAMATION CLAIM REQUIRES ACTUAL MALICE.....	39
D. MR. MUSK’S TWEETS DO NOT CONSTITUTE DEFAMATION. ....	44

## UNCONTROVERTED FACTS

### A. The Thai Cave Rescue and Plaintiff's Role

Elon Musk's Uncontroverted Facts	Supporting Evidence
1. On June 23, 2018, members of a Thai youth soccer team, and one of their coaches went missing in the Tham Luang Cave System in the Chiang Rai province of Thailand.	Dkt. 1, Complaint ("Compl.") ¶ 23.
2. Within days of the soccer team going missing, an international search and rescue mission to locate the team was undertaken.	Compl. ¶¶ 2, 3, 23-61.
3. The story of the stranded soccer team and the efforts to rescue them captured the attention of the world.	<i>Id.</i>
4. On June 24, 2018, Plaintiff Vernon Unsworth ("Mr. Unsworth") traveled to the cave system after learning that the soccer team had gone missing.	Compl. ¶¶ 29-30.
5. Mr. Unsworth participated in efforts to rescue the soccer team (the "Thai Cave Rescue")	Compl. ¶¶ 2, 31-41.
6. On or about June 29, 2018, Mr. Unsworth was interviewed by BBC-Thai regarding the Thai Cave Rescue.	Declaration of Michael T. Lifrak ("Lifrak Decl."), ¶ 3.

1	7. On July 3, 2018, <i>The New</i>	Lifrak Decl. Ex. 3.
2	<i>York Times</i> published an article titled	
3	“Thailand Cave Rescue Turns to How to	
4	Extract Trapped Soccer Team,” which	
5	quoted Mr. Unsworth.	
6	8. On July 4, 2018, <i>The Daily</i>	Lifrak Decl. Ex. 4.
7	<i>Mail</i> published an article about Mr.	
8	Unsworth titled “British caver is hailed a	
9	‘magician’ after convincing Thai officials	
10	to bring in heroic UK divers who found	
11	stranded schoolboys, aided by his	
12	knowledge of the tunnels.”	
13	9. On July 13, 2018, CNN	Lifrak Decl. Ex. 5.
14	published an article titled “British diver	
15	recalls Thai cave rescue: ‘Are we heroes?	
16	No,’” which quoted Mr. Unsworth and	
17	described his involvement in the rescue.	
18	10. On July 15, 2018, <i>The</i>	Lifrak Decl. Ex. 6.
19	<i>Sunday Times</i> published an article titled	
20	“Exclusive interview with cave rescue	
21	hero Vernon Unsworth: ‘If the Brits	
22	hadn’t been called in, it would have been	
23	too late,” which quoted Mr. Unsworth and	
24	described his involvement in the rescue.	

11. On December 3, 2018, in its December “Men of the Year” edition, <i>GQ Magazine</i> published an article titled “Miracle At Tham Luang” that described Mr. Unsworth’s involvement in the Thai Cave Rescue.	Lifrak Decl. Ex. 7.
12. Mr. Unsworth testified that at the Thai Cave Rescue site, his “face was very well known to reporters.”	Lifrak Decl. Ex. 1 (Unsworth Depo. at 292:11-18).
13. In June 2019, Mr. Unsworth was titled a Member of the Most Excellent Order of the British Empire (MBE).	Lifrak Decl. Ex. 1 (Unsworth Depo. 102:2-15); Ex. 9 (Rog Resp.) at 7.
14. Mr. Unsworth participated in two National Geographic documentaries titled “The Cave” and “Drain the Oceans.”	Lifrak Decl. Ex. 9 (Rog Resp.) at 8.
15. Mr. Unsworth contributed to three books about the Thai Cave Rescue: <i>The Boys in the Cave</i> by Matt Gutman, <i>The Cave</i> by Liam Cochrane, and an untitled and not yet released children’s book by Christina Soontornvat.	Lifrak Decl. Ex. 9 (Rog Resp.) at 6.
16. In December 2018, Mr. Unsworth gave an interview to the British Broadcasting Service (“BBC”) about his involvement in the Thai Cave Rescue.	Lifrak Decl. Ex. 9 (Rog Resp.) at 5.

17. In June 2019, Mr. Unsworth gave an interview to the BBC Beyond Today podcast about his involvement in the Thai Cave Rescue.	Lifrak Decl. Ex. 9 (Rog Resp.) at 5.
18. After the Thai Cave Rescue concluded, Mr. Unsworth communicated with members of the media including journalist Phillip Sherwell (who writes for <i>The Sunday Times</i> ) and ABC News Correspondent Matt Gutman.	Lifrak Decl. Exs. 10-12.
19. Mr. Unsworth has given a number of presentations about the Thai Cave Rescue, including presentations to NIST International School of Bangkok, Shresbury International School of Bangkok, British Club Bangkok, ASEAN Foreign Ministers, ASEAN Ministers of Finance, ASEAN Civil Servants, SCB Bank Officials.	Lifrak Decl. Ex. 9 (Rog Resp.) at 7-8.
20. Mr. Unsworth has spoken to agents about film rights regarding the Thai Cave Rescue.	Lifrak Decl. Ex. 13.

**B. The Public Debate Over the Cave Rescue**  
**and Mr. Musk's Involvement**

21. On July 13, 2018, the *Washington Post* published an article entitled "Time is running out: Inside the treacherous rescue of boys trapped in a Thai cave." Among other things, the article described how "[i]deas [about how to rescue the team] came from every corner: a network of corrugated pipes the boys could crawl through; floating them out in body bags. Billionaire entrepreneur Elon Musk began construction of a custom kid-size minisub."

Lifrak Decl. Ex. 20.

22. On July 7, 2018, *The New York Times* published an article titled "Elon Musk Thinks a Mini-Submarine Could Help in Thai Cave Rescue." Among other things, it said:

- "Engineers from companies led by Elon Musk, the billionaire known for outside-the-box ideas like his aspiration to colonize Mars, were en route to Thailand on Saturday to offer their expertise to help rescue 12 boys and their soccer coach

Lifrak Decl. Ex. 14.

1 from the Tham Luang cave in  
2 northern Thailand.”

- 3 • “On Twitter, Mr. Musk has mused  
4 about potential inventions that  
5 could help the trapped soccer team,  
6 including a miniature submarine  
7 made from part of a SpaceX  
8 rocket.”
- 9 • “Edgar Choueiri, a professor at  
10 Princeton University who  
11 specializes in rocket research, said  
12 Mr. Musk’s submarine idea  
13 suggested that he imagined the  
14 Falcon rocket’s hollow transfer  
15 tube — which helps move liquid  
16 oxygen to fuel the rocket’s engine  
17 — would be the appropriate size to  
18 transfer the boys out of the flooded  
19 cave.”
- 20 • “‘I would never bet against Elon  
21 Musk,’ Mr. Choueiri said.”
- 22 • “Others were not as confident.  
23 Greg Moore, a regional director for  
24 the National Cave Rescue  
25 Commission, said most rescues  
26 prompt a series of newfangled  
27 ideas that are not necessarily  
28 practical. Mr. Musk’s submarine



1	would likely have trouble fitting	
2	through the narrowest	
3	passageways, he said.”	
4	• “This is not Mr. Musk’s first foray	
5	into emergency assistance. In the	
6	wake of Hurricane Maria in Puerto	
7	Rico, which resulted in devastating	
8	power outages, Tesla provided	
9	batteries to help keep the lights	
10	on.”	
11	23. On July 10, 2018, <i>The New</i>	Lifrak Decl. Ex. 15.
12	<i>York Times</i> published an article titled	
13	“Elon Musk Defends His Rejected Mini-	
14	Sub Plan for Thai Cave.” Among other	
15	things, it said:	
16	• “As the world watched rescuers	
17	struggle to save 12 boys and their	
18	soccer coach trapped in a cave in	
19	northern Thailand, the tech	
20	billionaire Elon Musk dreamed up	
21	a ‘kid-size’ submarine to help. It	
22	turns out they didn’t need it. So he	
23	left it there, ‘in case it may be	
24	useful in the future,’ he said on	
25	Twitter.”	
26	• “On Tuesday, the head of the	
27	search operation, Narongsak	
28		

Osottanakorn, until recently the provincial governor, rejected the notion that Mr. Musk's custom-made submersible was suitable for the extraction. 'I assure you that the equipment he brought to help us is not practical for our mission,' Mr. Narongsak said. 'Even though the equipment has state of the art technology, it does not fit our mission in the cave.'"

- "In his tweets amid the rescue, Mr. Musk presented his own evidence that team leaders had welcomed his help. He said of Mr. Narongsak: 'The former Thai provincial governor (described inaccurately as 'rescue chief') is not the subject matter expert.' He said the expert was Richard Stanton, one of the first two British cave divers to reach the soccer team, and Mr. Musk shared an email in which Mr. Stanton had asked him to 'please keep working on the capsule details.' But a spokesman for Mr. Stanton said Tuesday that the cave

1	proved to be too narrow for the	
2	mini-submarine.”	
3	24. On July 10, 2018, the BBC	Lifrak Decl. Ex. 16.
4	published an article titled “Why was Elon	
5	Musk at the Thai cave rescue?” Among	
6	other things, the article said:	
7	• “The SpaceX and Tesla chief	
8	posted on social media that he had	
9	visited the operation's command	
10	centre, where he said he had left a	
11	mini-submarine that had been	
12	designed to carry a trapped football	
13	team to safety. The head of the	
14	rescue mission thanked Mr Musk	
15	for his offer. But he said the sub	
16	could not be used.”	
17	• “The billionaire has form with	
18	making eye-catching humanitarian	
19	acts.”	
20	• “Last year, he was thanked by	
21	Puerto Rico's governor for setting	
22	up a solar panel and battery system	
23	to provide power to a children's	
24	hospital in San Juan after it was hit	
25	by a hurricane.”	
26	• “But while his most recent	
27	intervention has won him praise	
28	from some, others have questioned	

- 1 his motivations and suggested he  
 2 might even have been a  
 3 distraction.”
- 4 • ““Elon Musk is well known to have  
 5 an eye for the headlines, but to be  
 6 fair he only became involved after  
 7 a message from one of his army of  
 8 fans on Twitter,’ commented the  
 9 BBC's technology correspondent  
 10 Rory Cellan-Jones.”
  - 11 • ““The fact that his company's space  
 12 technology and its much vaunted  
 13 tunnelling skills proved irrelevant  
 14 to the operation is a reminder that  
 15 sometimes this tech superhero  
 16 doesn't quite match up to the Iron  
 17 Man of his fans’ dreams.””

18 25. On July 10, 2018, the tech  
 19 publication Gizmodo published an article  
 20 titled “Is Elon Musk Serious?” Among  
 21 other things, the article said:

- 22 • “A kid-sized submarine arrived in  
 23 northern Thailand, just a few hours  
 24 before the final four members of a  
 25 youth soccer team and their coach  
 26 were rescued from the flooded  
 27 Tham Luang cave complex. Elon

Lifrak Decl. Ex. 17.

1 Musk, whose minions had built the  
2 sub out of SpaceX rocket materials  
3 for the sole purpose of moving the  
4 trapped boys to safety, delivered  
5 the mini sub himself and  
6 announced his presence in a tweet  
7 to his 22 million followers.

8 Meanwhile, the rescue chief said  
9 that the kid-sized submarine was  
10 ‘not practical’ for the boys, as  
11 thousands heaped praise onto Musk  
12 for doing—well—it’s unclear if the  
13 bombastic billionaire really did  
14 anything helpful. Which makes  
15 you wonder: is Elon Musk serious  
16 with this shit?”

- 17 • “The short answer to that question  
18 is no. Musk has a long track record  
19 of promising to solve huge  
20 problems and then either missing  
21 deadlines or falling short. Along  
22 the way, he’s also built up a cult of  
23 personality that leads fans to  
24 compare him to comic book  
25 superheroes. So even if Musk isn’t  
26 really serious about his ridiculous,  
27 buzz-building projects, plenty of  
28

1 people still think he is. We need to  
2 stop that.”

- 3 • “The weird difference between  
4 some of Musk’s famous vaporific  
5 moonshots and the kid-sized  
6 submarine is that Musk actually  
7 built the sub. But it’s nothing more  
8 than a useless stunt. Not only did  
9 Musk show up too late to help, he  
10 showed up with a tool that wasn’t  
11 even helpful. As it seemed  
12 increasingly obvious that the sub  
13 wouldn’t actually rescue any boys  
14 from the cave, Musk later tweeted  
15 that it ‘could also be used as an  
16 escape pod in space.’ So at least  
17 there’s that non-existent  
18 contingency.”

- 19 • “What’s most frustrating about  
20 Musk’s stunts is how everything  
21 feels a little bit like a gift. Like,  
22 every time, you have to wonder  
23 what Musk is really selling, and as  
24 time goes on, those sales pitches  
25 become more convoluted. The  
26 Mars thing was a great way to  
27 build publicity for SpaceX. The  
28

Hyperloop fiasco seems like some sort of weird ad for Tesla and the future of transportation. The Boring Company, complete with promotional flamethrowers, is a different version of a Tesla ad. But with this kid-sized submarine, it's not immediately clear what Musk is shilling."

26. On July 11, 2018, *The New York Daily News* published an article titled "Elon Musk hits back at criticism over inserting himself in Thai boys cave rescue." The article said, among other things:

- "Billionaire businessman Elon Musk has defended against allegations that he needlessly inserted himself into the plight of the Thai soccer team stuck in a flooded cave. Narongsak Osottanakorn, who led the rescue effort that freed the 12 boys and their coach on Tuesday, said Musk's offer of a tiny, boy-sized submarine was 'not practical' to use at the Tham Luang cave."

Lifrak Decl. Ex. 18.

- 1 • “Musk had been following the  
2 boys’ calamity, which started on  
3 June 23, and had a team of his  
4 engineers make the sub. He  
5 posted on Twitter from the cave  
6 on Monday, and said he was  
7 leaving his creation there ‘in case  
8 it may be useful in the future.’”
- 9 • “Some internet commentators  
10 took Musk’s motives as purely  
11 self-focused, given the flood of  
12 media attention to the Wild Boars  
13 team and international rescue  
14 effort. ‘This reaction has shaken  
15 my opinion of many people. We  
16 were asked to create a backup  
17 option & worked hard to do so.  
18 Checked with dive team many  
19 times to confirm it was  
20 worthwhile. Now it’s there for  
21 anyone who needs it in future.  
22 Something’s messed up if this is  
23 not a good thing,’ he posted on  
24 Twitter Wednesday.”

25 27. On July 12, 2018, *The New*  
26 *York Times* published an article titled  
27 “Thai Navy May Put Elon Musk’s Mini-  
28

Lifrak Decl. Ex. 19.



1 Submarine to Use. One Day.” The article  
2 said, among other things:

- 3 • “Thailand may have use for Elon  
4 Musk’s ‘kid-sized’ submarine after  
5 all.”
- 6 • The tech billionaire had designed  
7 the miniature submarine, built with  
8 rocket parts, to help save the 12  
9 boys and their 25-year-old soccer  
10 coach trapped in a flooded cave in  
11 northern Thailand. On Tuesday,  
12 rescuers pulled off an improbable  
13 feat when they finished removing  
14 all 13 people from the Tham Luang  
15 Cave.”
- 16 • “The chief of the rescue mission  
17 had called the device ‘not  
18 practical’ for the operation, which  
19 required squeezing through narrow  
20 passageways in the cave, but a  
21 Thai military official said the mini-  
22 submarine could be useful for  
23 future rescue missions.”
- 24 • “Maj. Gen. Chalongchai  
25 Chaiyakham, the deputy  
26 commander to Thailand’s Third  
27 Army, said Wednesday that the  
28

1	mini-submarine would be	
2	appropriate for use in open water	
3	and that he had heard the	
4	technology would be given to the	
5	Thai Navy SEAL team.”	
6	• “A Boring Company spokesman	
7	said the SpaceX engineers met	
8	with members of the Thai Navy on	
9	Wednesday and that the last	
10	employees left Thailand on	
11	Thursday morning. Mr. Musk	
12	responded to the photos of the	
13	training session on Twitter, saying	
14	the engineers were also getting	
15	feedback from British divers on	
16	how the technology could be	
17	improved.”	
18	28. On July 10, 2018, in the BBC	Lifrak Decl. Ex. 16.
19	article <i>Why was Elon Musk at the Thai</i>	
20	<i>cave rescue?</i> the former Provincial	
21	Governor of Chiang Rai was quoted,	
22	claiming that Mr. Musk’s mini-submarine	
23	was “not practical with our mission” to	
24	rescue the soccer team.	
25	29. On July 10, 2018, Mr. Musk	Declaration of Elon Musk (“Musk
26	responded to governor’s statement on	Decl.”) Musk Decl.¶ 18, Ex. E.
27	Twitter.	
28		

1	30. Mr. Musk donated the mini-	Lifrak Decl. Ex. 2 (Musk Depo.
2	submarine to the Thai Navy to be used in	121:16-22); Musk Decl. ¶ 15.
3	future rescue missions.	
4	31. Mr. Musk is the founder and	Musk Decl. ¶ 1.
5	CEO of Tesla Inc., a publicly traded	
6	company.	
7		
8	<b><u>C. Without Provocation, Mr. Unsworth Attacks Musk on CNN</u></b>	
9	32. On or about July 13, 2018,	Compl. ¶¶ 70-71; Lifrak Decl. Ex. 1
10	Mr. Unsworth gave an interview to CNN	(Unsworth Depo. 213:22-214:5); Ex.
11	International.	22.
12	33. Before giving his interview to	Lifrak Decl. Ex. 1 (Unsworth Depo.
13	CNN International on July 13, 2018, Mr.	214:17-218:10).
14	Unsworth watched a video of the mini-	
15	submarine constructed by Mr. Musk and	
16	his team.	

34. In his interview, in response to a question asking what his “thoughts on [Mr. Musk’s] idea was,” Mr. Unsworth stated that “[Mr. Musk] can stick his submarine where it hurts. It just had absolutely no chance of working. He had no conception of what the cave passage was like. The submarine, I believe, was about 5 foot 6 long, rigid, so it wouldn’t have gone round corners or round any obstacles. It wouldn’t have made the first fifty meters into the cave from the dive start point. Just a PR stunt.” He also stated that “[Mr. Musk] was asked to leave [the rescue site] very quickly.”

Lifrak Decl. Ex. 21.

**D. Mr. Musk’s July 15, 2018 Tweets and Subsequent Apology**

35. On or about July 15, 2018, Mr. Musk saw video of Mr. Unsworth’s CNN International interview.

Lifrak Decl. Ex. 2 (Musk Depo. 26:13-27:15); Musk Decl. ¶ 19.

1	36. After watching the video, Mr.	Lifrak Decl. Ex. 2 (Musk Depo. 25:5-
2	Musk googled Mr. Unsworth and learned	19; 42:18-43:8); Musk Decl. ¶ 22.
3	that he was an older white man from the	
4	United Kingdom who lived in an area of	
5	Thailand known for child prostitution and	
6	sex trafficking.	
7	37. In response to Mr.	Musk Decl. ¶ 24, Ex. F.
8	Unsworth's CNN International interview,	
9	Mr. Musk posted a first tweet on July 15,	
10	2018 that read: "Never saw this British	
11	expat guy who lives in Thailand (sus) at	
12	any point when we were in the caves.	
13	Only people in sight were the Thai	
14	navy/army guys, who were great. Thai	
15	navy seals escorted us in – total opposite	
16	of wanting us to leave."	
17	38. By referring to Mr. Unsworth	Lifrak Decl. Ex. 2 (Musk Depo.
18	as "sus," Mr. Musk did not intend to	154:12-24); Musk Decl. ¶ 25.
19	convey any specific facts capable of being	
20	proven true or false, instead he sought to	
21	convey that Mr. Unsworth was "just a	
22	weird guy...looking for press."	
23	39. Mr. Unsworth admitted in	Lifrak Decl. Ex. 1 (Unsworth Depo.
24	deposition that there was nothing about	260:6-15).
25	him in Mr. Musk's first alleged	
26	defamatory tweet posted on July 15, 2018	
27	that was false.	
28		

1	40. In response to Mr.	Musk Decl. ¶ 26, Ex. G.
2	Unsworth's CNN International interview,	
3	Mr. Musk posted a second tweet on July	
4	15, 2018 that read: "Water level was	
5	actually very low & still (not flowing) –	
6	you could literally have swum to Cave 5	
7	with no gear, which is obv how the kids	
8	got in. If not true, then I challenge this	
9	dude to show final rescue video. Huge	
10	credit to pump & generator team. Unsung	
11	heroes here."	
12	41. Mr. Unsworth admitted in	Lifrak Decl. Ex. 1 (Unsworth Depo.
13	deposition that there was nothing about	263:5-264:9).
14	him in Mr. Musk's second alleged	
15	defamatory tweet posted on July 15, 2018	
16	that was false.	
17	42. In response to Mr.	Musk Decl. ¶ 27, Ex. H.
18	Unsworth's CNN International interview,	
19	Mr. Musk posted a third tweet on July 15,	
20	2018 that read: "You know what, don't	
21	bother showing the video. We will make	
22	one of the mini-sub/pod going all the way	
23	to Cave 5 no problem. Sorry pedo guy,	
24	you really did ask for it."	

1	43. The term “pedo guy” was a	Lifrak Decl. Ex. 2 (Musk Depo.
2	common insult used during Mr. Musk’s	51:21-52:17); Musk Decl. ¶ 28.
3	youth in South Africa, which he	
4	understood was synonymous with “creepy	
5	old man” and aimed at insulting one’s	
6	appearance and demeanor.	
7	44. The term “pedo guy” as used	<i>Id.</i>
8	and understood by Mr. Musk is not an	
9	accusation of acts of pedophilia.	
10	45. Mr. Musk did not intend to	Lifrak Decl. Ex. 2 (Musk Depo.
11	frame the third tweet to imply that Mr.	51:21-52:17; 198:3-10); Musk Decl. ¶
12	Unsworth undertook acts of pedophila,	29.
13	and instead meant to suggest that Mr.	
14	Unsworth “seem[ed] like a creepy old	
15	man.”	
16	46. The definition of pedophile,	Lifrak Decl. Ex. 2 (Musk Depo.
17	as Mr. Musk understood the term, includes	38:12-20); Compl. ¶ 78.
18	adults who “derive[] sexual gratification	
19	from sexual fantasies...involving a child.”	
20	47. In response to a tweet	Musk Decl. ¶ 30, Ex. I.
21	regarding Mr. Musk’s tweets, Mr. Musk	
22	posted a fourth tweet on July 15, 2018 that	
23	read: “bet ya a signed dollar its true.”	

1	48. Mr. Musk testified that the	Lifrak Decl. Ex. 2 (Musk Depo.
2	fourth tweet was a “flippant comment”	141:2-22, 140:16-25).
3	meant to convey that he “was not certain”	
4	about the prior tweets and found Mr.	
5	Unsworth “suspicious.”	
6	49. Mr. Musk deleted all four	Musk Decl. ¶ 31.
7	tweets within hours of their publication.	
8	50. On July 18, 2018, Mr. Musk	Musk Decl. ¶ 32, Ex J.
9	posted two tweets that read: “As this well-	
10	written article suggests, my words were	
11	spoken in anger after Mr. Unsworth said	
12	several untruths & suggested I engage in a	
13	sexual act with the mini-sub, which had	
14	been built as an act of kindness &	
15	according to specifications from the dive	
16	team leader,” and “Nonetheless, his	
17	actions against me do not justify my	
18	actions against him, and for that I	
19	apologize to Mr. Unsworth and to the	
20	companies I represent as leader. The fault	
21	is mine and mine alone.”	



**E. Mr. Musk Retains an Investigator who Reports On Mr. Unsworth.**

<p>51. On or around August 15, 2018, Jared Birchall, the president of Mr. Musk’s home office, retained James Howard, a private investigator and president of the investigation firm Jupiter Military &amp; Tactical Systems, to conduct an investigation of Mr. Unsworth in the United Kingdom and Thailand on Mr. Musk’s behalf.</p>	<p>Declaration of Jared Birchall (“Birchall Decl.”), ¶ 4; Birchall Decl. Ex. A.</p>
<p>52. Mr. Howard represented to Mr. Birchall that he served in the United Kingdom Special Forces for eleven years and the United Kingdom Security Service (commonly known as MI5) for two years and had experience performing sensitive work for high profile clients, including billionaires Paul Allen and George Soros.</p>	<p>Birchall Decl. ¶ 5, Ex. A.</p>
<p>53. Mr. Birchall told Mr. Howard in writing that he and Mr. Musk “aren’t looking to frame anyone. If there is definitively no smoking gun, then let’s get the information necessary to make that determination and it is what it is.”</p>	<p>Birchall Decl. ¶ 13, Ex. D.</p>

1	54. Through one of Mr. Musk's	Birchall Decl. ¶ 8.
2	corporations, Mr. Birchall ultimately paid	
3	Mr. Howard more than \$50,000 to	
4	perform the investigation.	
5	55. On August 17, 2018, Mr.	Birchall Decl. ¶ 11, Ex. C.
6	Howard wrote in an email to Mr. Birchall	
7	that "there is indeed an unpleasant	
8	undertone to some of his lifestyle choices"	
9	and "[t]here is no question that [Mr.	
10	Unsworth] 'associates' locally with	
11	Europeans who enjoy 'Thai comforts' that	
12	are not acceptable in a developed society."	
13	56. On telephone calls, including	Birchall Decl. ¶ 12.
14	before August 27, 2018, Mr. Howard	
15	described a Thai news article that quoted	
16	Mr. Unsworth's Thai wife and reported	
17	that Mr. Unsworth married his wife when	
18	she was 18 or 19 years old, but that they	
19	met seven years earlier, which would	
20	imply that she was eleven or twelve years	
21	old at the time.	
22	57. Within a day of receiving the	Birchall Decl. ¶ 12; Musk Decl. ¶ 35.
23	information, Mr. Birchall orally reported	
24	to Mr. Musk Mr. Howard's description of	
25	a Thai news article that quoted Mr.	
26	Unsworth's Thai wife and reported that	
27	Mr. Unsworth married his wife when she	
28	was 18 or 19 years old, but that they met	

seven years earlier, which would imply that she was eleven or twelve years old at the time.

58. On August 27, 2018, Mr. Howard wrote to Mr. Birchall that Mr. Unsworth “is 63 years old. His wife we believe is 30 which would have put her at 18/19 when they first met. The target would have been 52 yrs old at the time. This is NOT verified but will be ASAP.”

Birchall Decl. ¶ 14, Ex. D.

59. On August 27, 2018, Mr. Howard also wrote to Mr. Birchall that Mr. Unsworth has been traveling to Thailand since the late 1980s and that Mr. Unsworth’s “behaviour is at best described as a ‘Manther’ – UK slang for the opposite of Cougar.”

*Id.*

60. Before August 28, 2018, Mr. Birchall orally relayed to Mr. Musk the contents of Mr. Howard’s phone calls and his August 17 and August 27, 2018 emails, including Mr. Howard’s reports that Mr. Unsworth associated with Europeans who engage in improper sexual conduct in Thailand, and has been traveling to Thailand since the 1980s.

Birchall Decl. ¶ 15; Musk Decl. ¶ 35.

61. After Mr. Howard sent the August 27, 2018 email to Mr. Birchall, he again represented on a phone call to Mr. Birchall that there was evidence suggesting that Mr. Unsworth met and began a relationship with his wife when she was eleven or twelve. Mr. Birchall reported this information to Mr. Musk.

Birchall Decl. ¶ 16.

**F. Mr. Musk's August 28, 2018 Tweet**

62. On August 28, 2018, in response to a tweet from Drew Olanoff, a reporter for TechCrunch, that Mr. Musk's "dedication to facts and truth would have been wonderful if applied to that time when you called someone a pedo," Mr. Musk tweeted "You don't think it's strange he hasn't sued me? He was offered free legal services."

Musk Decl. ¶ 38, Ex. K.

63. At the time he sent the August 28, 2018 tweet, Mr. Musk had knowledge of Mr. Howard's initial findings, as they were relayed to him by Mr. Birchall, including Mr. Howard's reports that that Mr. Unsworth associated with Europeans who engage in improper sexual conduct in Thailand, has been

Musk Decl. ¶ 39.

1 traveling to Thailand since the 1980s, and  
 2 that there was a report Mr. Unsworth met  
 3 and began a relationship with his wife  
 4 when she was eleven or twelve.

5  
 6 **G. The Investigator Reports More Detailed Findings to Birchall**

7 64. In late August 2018, Mr.  
 8 Howard told Mr. Birchall in telephone  
 9 conversations that he learned that Mr.  
 10 Unsworth spent significant time in Pattaya  
 11 Beach, which is well known for  
 12 prostitution and sex tourism, that Mr.  
 13 Unsworth associated with other European  
 14 expatriates who engaged in inappropriate  
 15 sexual conduct in Thailand, and that that  
 16 Mr. Unsworth was unpopular at the Thai  
 17 Cave Rescue because others regarded him  
 18 as “creepy.”

Birchall Decl. ¶ 17.

19 65. Before the evening of August  
 20 30, 2018, Mr. Birchall had also relayed to  
 21 Mr. Musk Mr. Howard’s findings that Mr.  
 22 Unsworth met his wife when she was  
 23 eleven or twelve, that Mr. Unsworth  
 24 traveled to Thailand since the 1980s and  
 25 that he frequented Pattaya Beach which is  
 26 well known for prostitution and sex  
 27 tourism, and that Mr. Unsworth was  
 28

Birchall Decl. ¶¶ 14-17, 19; Musk  
 Decl. ¶ 35.

1	unpopular at the rescue site because other	
2	rescue workers thought that he was	
3	“creepy.”	
4	66. On August 30, 2018, Mr.	Birchall Decl. ¶ 18, Ex. E.
5	Howard sent to Mr. Birchall a formal	
6	preliminary report of his investigation of	
7	Mr. Unsworth.	
8	67. Mr. Howard’s August 30,	Birchall Decl. ¶ 19, Ex. E.
9	2018 preliminary report included the	
10	following statements:	
11	• “Mr. Unsworth has been a frequent	
12	visitor to Thailand since the 1980’s.	
13	Prior to meeting his current wife we	
14	believe that Mr. Unsworth was living	
15	in the Pattaya Beach...Pattaya Beach	
16	is synonymous with prostitution and	
17	scam artists. We are in the process of	
18	verifying this information which was	
19	mentioned to the lead investigator by	
20	Mr. Unsworth’s mother-in-law.”	
21	• “Mr. Unsworth has been described to	
22	our investigation team by other UK	
23	volunteers attached to the Cave	
24	Rescue team as a ‘Manther’ slang for	
25	an older man with a taste for younger	
26	women.”	
27	• “The sexpat whore-mongers his way	
28		

1	through the go-go bars of Thailand.	
2	His only other friends are his sexpat	
3	peers. Peek-density occurs in and	
4	around Pattaya – Thailand’s sin city.”	
5	• “[S]ome of the UK and Dutch divers	
6	who also volunteered stated that Mr.	
7	Unsworth was not a popular or	
8	particularly liked man in the Cave	
9	Rescue Team. When pushed as to	
10	why, they simply replied ‘Creepy’.”	
11	• “Mr. Unsworth is an unpopular	
12	loner.”	
13	68. An employee of one of Mr.	Lifrak Decl. Ex. 2 (Musk Depo.
14	Musk’s companies who was present at the	247:24-248:16); Musk Decl. ¶ 37.
15	Thai Cave Rescue, informed Mr. Musk	
16	that the dive team did not want Mr.	
17	Unsworth at the rescue site.	
18	<b><u>H. Mr. Musk’s “Off-the-Record” Emails to BuzzFeed</u></b>	
19		
20	69. On August 6, 2018, counsel	Compl. Ex. H.
21	for Mr. Unsworth allegedly sent a demand	
22	letter to Mr. Musk.	
23	70. On August 29, 2018, counsel	Lifrak Decl. Ex. 22.
24	for Mr. Unsworth publicly tweeted a copy	
25	of his demand letter to Mr. Musk’s twitter	
26	account.	
27		
28		

1	71. On August 29, 2018, Ryan	Musk Decl. ¶ 40, Ex. L.
2	Mac, a reporter with BuzzFeed News,	
3	emailed Mr. Musk seeking a comment for	
4	a story about a demand letter sent by Mr.	
5	Unworth's counsel to Mr. Musk.	
6	72. On the evening of August 30,	Musk Decl. ¶ 41, Ex. L.
7	2018 Mr. Mac sent a follow up email to	
8	Mr. Musk.	
9	73. On August 30, 2018, Mr.	Musk Decl. ¶ 42, Exs. L-M.
10	Musk sent two emails to Mr. Mac.	
11	74. Mr. Musk's first email to Mr.	Musk Decl. ¶ 43, Ex. L.
12	Mac stated "Off the record" at the top of	
13	the message.	
14	75. Mr. Musk did not authorize	Lifrak Decl. Ex. 2 (Musk Depo.
15	BuzzFeed to publish his email or its	173:23-175:11); Musk Decl. ¶ 43.
16	contents.	
17	76. Mr. Musk did not intend for	Lifrak Decl. Ex. 2 (Musk Depo.
18	BuzzFeed to publish the contents of his	173:23-175:11); Musk Decl. ¶ 43.
19	email, especially without independent	
20	verification.	
21	77. In his first email to Mr. Mac,	Musk Decl. Ex. L.
22	Mr. Musk told him to "call people you	
23	know in Thailand, find out what's actually	
24	going on."	
25	78. Mr. Musk wrote in the first	Musk Decl. ¶ 44, Ex. L.
26	email to Mr. Mac "stop defending child	
27	rapists."	
28		



1	79. Mr. Musk's statement that	Musk Decl. ¶ 44; Lifrak Decl. Ex. 2
2	Mr. Unsworth was a "child rapist" was	(Musk Depo. 176:4-24).
3	based on information relayed to him by	
4	Mr. Birchall.	
5	80. In his first email to Mr. Mac,	Musk Decl. ¶ 45, Ex. L.
6	Mr. Musk wrote that Mr. Unsworth had	
7	been "traveling to or living in Thailand for	
8	30 to 40 years, mostly Pattaya Beach, until	
9	moving to Chiang Rai for a child bride	
10	that was about 12 years old at the time."	
11	81. Mr. Musk's statement that	Musk Decl. ¶ 45; Lifrak Decl. Ex. 2
12	Mr. Unsworth had been "traveling to or	(Musk Depo. 62:8-64:15).
13	living in Thailand for 30 to 40 years,	
14	mostly Pattaya Beach, until moving to	
15	Chiang Rai for a child bride that was	
16	about 12 years old at the time" was based	
17	on information relayed to him by Mr.	
18	Birchall.	
19	82. Mr. Musk also wrote in his	Musk Decl. ¶ 46, Ex. L.
20	first email to Mr. Mac on August 30, 2018	
21	that "there's only one reason people go to	
22	Pattaya Beach. It isn't where you go for	
23	caves, but it is where you'd go for	
24	something else."	
25	83. Mr. Musk's statement that	Musk Decl. ¶ 46; Lifrak Decl. Ex. 2
26	"there's only one reason people go to	(Musk Depo. 62:8-64:15).
27	Pattaya Beach. It isn't where you go for	
28		

1	caves, but it is where you'd go for	
2	something else" was based on information	
3	relayed to him by Mr. Birchall.	
4	84. Mr. Musk also wrote "Chiang	Musk Decl. ¶ 47, Ex. L.
5	Rai is renowned for child sex-trafficking."	
6	85. Mr. Musk's statement was	Musk Decl. ¶ 47, Ex. L.
7	supported by and consistent with a Google	
8	search that he also provided in the email.	
9	86. Mr. Musk also wrote that	Musk Decl. ¶ 48, Ex. L.
10	"most of the actual dive team refused to	
11	hang out with [Mr. Unsworth]."	
12	87. Mr. Musk's statement that	Musk Decl. ¶ 48.
13	"most of the actual dive team refused to	
14	hang out with [Mr. Unsworth]" was	
15	consistent with and based on information	
16	relayed to him by Mr. Birchall and his	
17	employee.	
18	88. Mr. Musk did not know or	Musk Decl. ¶ 49.
19	believe that any statements in his first	
20	email to Mr. Mac were false; nor did he	
21	entertain any serious doubts as to their	
22	truth.	
23	89. Mr. Musk's second email to	Musk Decl. ¶ 50, Ex. M.
24	Mr. Mac on August 30, 2018 stated "On	
25	background" at the top of the message.	
26	90. Mr. Musk wrote in the	Musk ¶ 51, M.
27	second email to Mr. Mac on August 30,	
28		

1	2018 that he “[n]ever saw Mr. Unsworth	
2	at any point. Was told he was banned	
3	from the site.”	
4	91. Mr. Musk’s statement that he	Lifrak Decl. Ex. 2 (Musk Depo.
5	“[n]ever saw Mr. Unsworth at any point.	247:24-248:16); Musk Decl. ¶ 51.
6	Was told he was banned from the site”	
7	was consistent with his own observations	
8	and based on information told to him by	
9	an employee of one of his companies.	
10	92. Mr. Musk did not know or	Musk Decl. ¶ 52.
11	believe that the statement that he “[n]ever	
12	saw Mr. Unsworth at any point. Was told	
13	he was banned from the site” was false;	
14	nor did he entertain any serious doubts as	
15	to its truth.	
16	93. Mr. Musk sent the	Lifrak Decl. Ex. 2 (Musk Depo.
17	information that he learned through Mr.	173:23-175:11); Musk Decl. ¶ 53.
18	Birchall and Mr. Howard to BuzzFeed so	
19	that BuzzFeed could conduct its own	
20	investigation into Mr. Unsworth to	
21	corroborate the information.	
22	94. On September 4, 2018, Mr.	Musk Decl. ¶ 54, Ex. L.
23	Mac responded to Mr. Musk’s August 30,	
24	2018 emails.	
25	95. In his first email to Mr. Musk	<i>Id.</i>
26	on September 4, 2018, Mr. Mac stated,	
27	among other things, that he “didn’t agree	
28		

1	for the conversation to be off the record”	
2	and he “tried to report out some of the	
3	accusations on [his] own but have not	
4	found anything to corroborate the claims.”	
5	96. On September 4, 2018, Mr.	Musk Decl. ¶ 55, Ex. L.
6	Musk responded in an email to Mr. Mac	
7	that “We haven’t had a conversation at all.	
8	I sent you an off the record email, which	
9	very clearly and unambiguously said, ‘off	
10	the record.’ If you want to publish off the	
11	record comments and destroy your	
12	journalistic credibility, that’s up to you.	
13	As for answering more questions, I would	
14	be happy to do so, but not with someone	
15	who just told me that they will not honor	
16	accepted rules of journalism.”	
17	97. Mr. Mac’s suggestion that	Lifrak Decl. Ex. 2 (Musk Depo.
18	that a positive confirmation from a	171:2-172:16); Musk Decl. ¶ 56-57.
19	reporter is required before a	
20	communication can be deemed off the	
21	record is “not consistent” with Mr. Musk’s	
22	prior numerous off-the-record interactions	
23	with reporters in the past.	
24	98. Mr. Musk believed and	Musk Decl. ¶ 56.
25	understood, based on numerous off-the-	
26	record interactions with reporters in the	
27	past, that by designating his emails to Mr.	
28	Mac as “off the record” or “on	

1	background” their contents would not be	
2	published.	
3	99. On July 15, 2018, Mr.	Lifrak Decl. Ex. 2 (Unsworth Depo.
4	Unsworth forwarded an email between	78:13-79:19); Ex. 23.
5	himself and Richard Stanton to a BBC	
6	reporter. The first line of Mr. Unsworth’s	
7	email to the BBC reporter stated “[f]or	
8	your eyes only and not to be reported	
9	on!!!” In deposition, Mr. Unsworth	
10	agreed that by including this language he	
11	was “telling [the BBC reporter] that he	
12	was not to include this information in a	
13	story.”	
14	100. The BuzzFeed News	Lifrak Decl. Ex. 24.
15	Standards and Ethics Guide in effect on	
16	August 30, 2018 and September 4, 2018	
17	did not require that a reporter and source	
18	reach an agreement before information is	
19	treated as “off-the-record.”	
20	101. In November 2018, two	Lifrak Decl. Ex. 25.
21	months after Mr. Musk exchanged emails	
22	with Mr. Mac, BuzzFeed updated the	
23	BuzzFeed News Standards and Ethics	
24	Guide to add the following language to its	
25	section on anonymous sources:	
26	“Interviews are always on the record until	
27	a reporter agrees to go off the record or on	
28		

1	background.” This policy did not exist at	
2	the time that Mr. Musk exchanged emails	
3	with Mr. Mac.	
4	102. BuzzFeed’s Standards and	Lifrak Decl. Ex. 24.
5	Ethics Guide in effect on August 30, 2018	
6	and September 4, 2018 stated:	
7	“Information — excluding common	
8	knowledge — should come from a	
9	verified source.”	
10	103. On September 4, 2018,	Compl., Ex. K; Lifrak Decl. Ex. 26.
11	BuzzFeed published a story that reprinted	
12	Mr. Musk’s off-the-record and on	
13	background emails in their entirety.	
14	104. On September 17, 2018, Mr.	<i>See generally</i> , Compl.
15	Unsworth filed the instant action in this	
16	Court.	
17		
18	<b><u>I. Mr. Unsworth Sues</u></b>	
19	105. Mr. Unsworth’s September	Compl. ¶ 113.
20	17, 2018 Complaint – the operative	
21	pleading in this case – lists the following	
22	exhibits to the Complaint as the “false and	
23	defamatory accusations” published by Mr.	
24	Musk: “Exhibits B [first July 15 tweet], C	
25	[second July 15 tweet], D [third July 15	
26	tweet], E [fourth July 15 tweet], F [July 18	
27	apology tweet], G [July 18 apology tweet],	
28		

I [July 28 tweet], and K [BuzzFeed September 4 article].”	
---	--

### **CONCLUSIONS OF LAW**

Based on the uncontroverted facts, the following conclusions of law should be reached:

#### **A. Applicable Standards**

1. “The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the facts before the court.” *Northwest Motorcycle Ass’n v. U.S. Dep’t of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994).

2. “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

3. A court should enter summary judgment “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

4. A party cannot avoid summary judgment if its “evidence is merely colorable, . . . or is not significantly probative”; “[t]he mere existence of a scintilla of evidence . . . will be insufficient.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50, 252 (1986). Although the facts must be viewed in the light most favorable to the non-moving party, that party “is entitled to the benefit of only *reasonable* inferences that may be drawn from the evidence put forth.” *Ackerman v. W. Elec. Co.*, 860 F.2d 1514, 1520 (9th Cir. 1988) (citation omitted). Moreover, “mere allegation and speculation do not create a factual dispute for purposes of summary judgment.” *Loomis v. Cornish*, 836 F.3d 991, 997 (9th Cir. 2016).

5. The Court may also grant summary judgment as to one of many claims, or a part of a claim. *Wang Labs., Inc. v. Mitsubishi Elecs. Am., Inc.*, 860 F. Supp. 1448, 1450 (C.D. Cal. 1993); *Kramer v. Thomas*, 2006 WL 4729242, at \*4 (C.D. Cal.

1 Sept. 28, 2006); *see also* Fed. R. Civ. P. 56(a) (permitting partial summary judgment  
 2 on a claim or part of a claim). “The standards and procedures for granting partial  
 3 summary judgment . . . are the same as those for summary judgment.” *Campbell v.*  
 4 *Vitran Express Inc.*, 2016 WL 873009, at \*3 (C.D. Cal. Mar. 2, 2016).

5 6. Even when the Court does not grant all the relief requested, it may enter  
 6 an order stating any material fact that it finds to not be genuinely in dispute and  
 7 treating that fact as established in the case. *See* Fed. R. Civ. P. 56(g).

8 7. Summary judgment is a “favored remedy” in defamation cases involving  
 9 the issue of “actual malice” under the standard set forth in *New York Times Co. v.*  
 10 *Sullivan*, 376 U.S. 254 (1964). *See Reader's Digest Assn. v. Superior Court*, 37 Cal.  
 11 3d 244, 252 (1984).

12 **B. Because Mr. Unsworth Is a Limited Purpose Public Figure,**  
 13 **a Defamation Claim Requires Actual Malice.**

14 8. Defamation claims brought by “limited purpose public figures” or  
 15 “vortex” public figures are subject to the *New York Times* “actual malice” standard.  
 16 *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342-43, 351 (1974); *Reader's Digest*, 37  
 17 Cal. 3d at 253.

18 9. Limited purpose public figures are persons who voluntarily inject  
 19 themselves into a public controversy and “become[] public figure[s] for a limited  
 20 range of issues” related to that controversy. *Gertz*, 418 U.S. at 351.

21 10. A plaintiff is a limited purpose public figure if 1) there is a public  
 22 controversy, (2) the plaintiff voluntarily injects himself into and/or seeks to influence  
 23 the resolution of the public controversy, (3) the alleged defamatory statement is  
 24 “germane” to the plaintiff’s participation in the controversy. *See Copp v. Paxton*, 45  
 25 Cal. App. 4th 829, 846 (1996).

26 11. Determining whether a plaintiff is a limited purpose public figure  
 27 requires an analysis of the totality of the circumstances of a particular controversy  
 28



1 and is a question of law that must be resolved by the court. *See Reader's Digest*, 37  
2 Cal. 3d at 255; *see also Khawar v. Globe Int'l, Inc.*, 19 Cal. 4th 254, 264 (1998).

3 12. A public controversy is a dispute that is “debated publicly” and has  
4 “foreseeable and substantial ramifications for nonparticipants” of the debate. *See*  
5 *Annette F. v. Sharon S.*, 119 Cal. App. 4th 1146, 1164 (2004) (citing *Waldbaum v.*  
6 *Fairchild Publications, Inc.*, 627 F.2d 1287, 1297 (D.C. Cir. 1980)); *see also Makaeff*  
7 *v. Trump Univ., LLC*, 715 F.3d 254, 267 (9th Cir. 2013) (“a public controversy must  
8 be a real dispute, the outcome of which affects the general public or some segment of  
9 it.”).

10 13. Aspects of the cave rescue were a public controversy as it was the  
11 subject of a much covered public debate and it had substantial ramifications for  
12 nonparticipants. *See Copp*, 45 Cal. App. 4th at 846 (debate over future earthquake  
13 disaster mitigation had foreseeable and substantial ramifications for nonparticipants);  
14 *Ampex Corp. v. Cargle*, 128 Cal. App. 4th 1569, 1577-78 (2005) (debate over  
15 publicly traded company had foreseeable and substantial ramifications for  
16 nonparticipant shareholders).

17 14. A person becomes a limited purpose public figure when he “undertake[s]  
18 some *voluntary* act through which he seeks to influence the resolution of the public  
19 issues involved,” *Reader's Digest*, 37 Cal. 3d at 254, such as voluntarily giving  
20 interviews with the press about a public controversy. *See Denney v. Lawrence*, 22  
21 Cal. App. 4th 927, 935–36 (1994) (plaintiff was limited purpose public figure  
22 because he volunteered to give press interviews promoting his own version of events  
23 regarding a murder); *Rudnick v. McMillan*, 25 Cal. App. 4th 1183, 1190 (1994)  
24 (plaintiff became a limited purpose public figure by inviting the press to write stories  
25 about him).

26 15. Mr. Unsworth became a limited purpose public figure on issues relating  
27 to the Thai Cave Rescue and Mr. Musk’s involvement by giving a number of  
28 interviews to the press, including his July 13, 2018 interview with CNN in which he

1 discussed Mr. Musk’s involvement in the rescue efforts and motivations. *See*  
 2 *Denney*, 22 Cal. App. 4th at 935-36; *see also Nadel v. Regents of University of*  
 3 *California*, 28 Cal. App. 4th 1251, 1269 (1994) (plaintiff who gave published quotes  
 4 and interviews to the press about a public controversy was a limited public figure).

5 16. Where a limited purpose public figure inserts himself into a public  
 6 controversy and uses his position, expertise, or credentials to influence public  
 7 opinion, his background, “talents, education, experience, and motives” become  
 8 germane to the controversy as “they could have been relevant to the public’s decision  
 9 whether to listen to him.” *Waldbaum*, 627 F.2d at 1298; *see also Copp*, 45 Cal. App.  
 10 4th at 846 (“Where the issue turns on expert or specialized knowledge, the plaintiff’s  
 11 own credentials assume such relevance to the controversy”).

12 17. Accordingly, Mr. Musk’s allegedly defamatory statements about Mr.  
 13 Unsworth – which related to Mr. Unsworth’s efforts, character, credibility, and  
 14 motives for participating in the rescue – were “germane” to the public controversy, as  
 15 they were “relevant to the public’s decision whether to listen to” Mr. Unsworth.  
 16 *Waldbaum*, 627 F.2d at 1298. They were also related “to understanding [plaintiff’s]  
 17 role and why he wanted to be involved in the [controversy].” *Jankovic v. Int’l Crisis*  
 18 *Grp.*, 822 F.3d 576, 589 (D.C. Cir. 2016).

19 18. Under the totality of the circumstances, Mr. Unsworth is a public figure  
 20 for issues relating to the Thai Cave Rescue and Mr. Musk’s involvement in the  
 21 rescue, and Mr. Musk’s statements about Mr. Unsworth are germane to those issues.  
 22 *See e.g., Copp*, 45 Cal. App. 4th at 846.

23 19. Limited purpose public figures must establish by clear and convincing  
 24 evidence that the alleged defamatory statement was made with “actual malice.” *New*  
 25 *York Times*, 376 U.S. at 280; *Christian Research Inst. v. Alnor*, 148 Cal. App. 4th 71,  
 26 84 (2007).

27 20. “The burden of proof by clear and convincing evidence ‘requires a  
 28 finding of high probability. The evidence must be so clear as to leave no substantial

1 doubt. It must be sufficiently strong to command the unhesitating assent of every  
2 reasonable mind.’” *Copp*, 45 Cal. App. 4th at 846.

3 21. The clear and convincing evidence standard applies on summary  
4 judgment; the Court may find that “no triable issues” exist and grant this motion  
5 “unless it appears that actual malice may be proved at trial by clear and convincing  
6 evidence.” *Reader’s Digest*, 37 Cal. 3d. at 245; *see also D.A.R.E. Am. v. Rolling*  
7 *Stone Magazine*, 101 F. Supp. 2d 1270, 1278 (C.D. Cal. 2000), *aff’d sub*  
8 *nom. D.A.R.E. Am. v. Rolling Stone Magazine*, 270 F.3d 793 (9th Cir. 2001) (same).

9 22. To establish actual malice, the plaintiff must prove by clear and  
10 convincing evidence that the defendant made the statements at issue “with knowledge  
11 that [they were] false or with reckless disregard of whether [they were] false or not.”  
12 *New York Times*, 376 U.S. at 279-80. This test is **subjective**, not objective. *See e.g.*,  
13 *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964); *St. Amant v. Thompson*, 390 U.S. 727,  
14 731-32 (1968) (actual malice requires “sufficient evidence to permit the conclusion  
15 that the **defendant in fact** entertained serious doubts as to the truth of his  
16 publication.”) (emphasis added).

17 23. “The *New York Times Co. v. Sullivan* standard does not require that the  
18 reporter hold a devout belief in the truth of the story being reported, only that he or  
19 she refrain from either reporting a story he or she *knows* to be false or acting in  
20 reckless disregard of the truth.” *Jackson v. Paramount Pictures Corp.*, 68 Cal. App.  
21 4th 10, 35–36 (1998).

22 24. The mere failure to fully investigate a report does not on its own give  
23 rise to actual malice, rather the “failure to investigate must fairly be characterized as  
24 the purposeful avoidance of the truth or the product of a deliberate decision not to  
25 acquire knowledge of facts that might confirm the probable falsity of [the subject]  
26 charges.” *Rosenauro v. Scherer*, 88 Cal. App. 4th 260, 277 (2001).

27 25. Gross negligence or the careless misinterpretation of information does  
28 not give rise to actual malice either. *See Christian Research*, 148 Cal. App. 4th at 88

1 (“Alnor might have carelessly interpreted Debra’s statement, but this would not  
 2 establish malice. ‘Gross or even extreme negligence will not suffice to establish  
 3 actual malice; the defendant must have made the statement with knowledge that the  
 4 statement was false or with ‘actual doubt concerning the truth of the publication.’”).

5 **C. The BuzzFeed Article Is Not Defamation by Mr. Musk**

6 26. Mr. Unsworth cannot prove by clear and convincing evidence that Mr.  
 7 Musk’s alleged defamatory statements in his August 30, 2018 emails to Ryan Mac  
 8 were made with actual malice as Mr. Musk was repeating reports he received (via a  
 9 trusted aide) from an investigator he retained to investigate Mr. Unsworth, and there  
 10 is no evidence that Mr. Musk knew that these statements were false or entertained  
 11 serious doubts as to their truth. *See e.g., Reader’s Digest*, 37 Cal. 3d. at 252 (finding  
 12 no actual malice where defendant published information obtained from a third party  
 13 source); *Christian Research*, 148 Cal. App. 4th at 91 (no actual malice where  
 14 information was purportedly obtained from an effectively anonymous source in the  
 15 postal inspector’s office). Mr. Unsworth’s defamation claim as to the August 30,  
 16 2018 off-the-record emails fails as a matter of law.

17 27. A defendant is not liable for the repetition or republication of a  
 18 defamatory remark unless the republication was authorized or reasonably foreseeable.  
 19 *Shively v. Bozanich*, 31 Cal. 4th 1230, 1243 (2003) (“repetition by a new party of  
 20 another person’s earlier defamatory remark also gives rise to a separate cause of  
 21 action for defamation against the *original defamer*, when the repetition was  
 22 reasonably foreseeable”); *DiGiorgio Corp. v. Valley Labor Citizen*, 260 Cal. App. 2d  
 23 268, 273 (1968) (same); *Curley v. Vick*, 211 Cal. App. 2d 670, 672–73 (1963) (same).

24 28. As a matter of law, it was not reasonably foreseeable that BuzzFeed  
 25 would unilaterally publish Mr. Musk’s August 30 communications that were labeled  
 26 off-the-record instead of independently verifying the information before publishing it.  
 27 *See e.g., Curley*, 211 Cal. App. 2d at 672-73. BuzzFeed’s own policies require that  
 28 information be verified before it is published, and in Mr. Musk’s countless

1 interactions with reporters the designation of communications as “off-the-record” has  
2 been honored.

3 **D. Mr. Musk’s Tweets Do Not Constitute Defamation.**

4 29. Mr. Musk’s July 15, 2018 tweets “could be construed as *either* fact or  
5 opinion,” Order on Defendant’s Motion to Dismiss; Dkt. 42, at 13 fn. 9 (emphasis in  
6 original).

7 30. Where statements can be “can reasonably be viewed as either fact or  
8 opinion,” to establish a claim for defamation, the plaintiff must prove by clear and  
9 convincing evidence “not only that the words were reasonably understood in their  
10 defamatory, factual sense, but also that the defendant either deliberately cast his  
11 statements in an equivocal fashion in the hope of insinuating a defamatory import to  
12 the reader, or that he knew or acted in reckless disregard of whether his words would  
13 be interpreted by the average reader as defamatory statements of fact.” *Good Gov’t*  
14 *Grp. of Seal Beach, Inc. v. Superior Court*. 22 Cal. 3d 672, 684 (1978). This is a  
15 subjective standard. *Id.*; *see also De Havilland v. FX Networks, LLC*, 21 Cal. App.  
16 5th 845, 870 (2018) (“because actual malice is a ‘deliberately subjective’ test,  
17 liability cannot be imposed for an implication that merely ‘should have been  
18 foreseen.’”).

19 31. Mr. Unsworth has failed to provide evidence that Mr. Musk subjectively  
20 intended for his July 15, 2018 alleged defamatory statements about Mr. Unsworth –  
21 Mr. Musk’s insults that Mr. Unsworth was “sus” and a “pedo guy”– to be interpreted  
22 as a statement of fact or that he entertained serious doubts as to whether they would  
23 be interpreted as such. *See Good Gov’t Grp. of Seal Beach, Inc.*, 22 Cal. 3d at 684.  
24 Mr. Musk’s testimony establishes otherwise and therefore Mr. Unsworth’s  
25 defamation claims as to the July 15, 2018 tweets fail as a matter of law. *See id.*

26 32. Mr. Unsworth’s defamation claim as to the July 15, 2018 tweets also  
27 fails as a matter of law because he cannot establish that Mr. Musk’s tweets were  
28 written with actual malice. Mr. Musk made these statements after learning that he

1 was an older Caucasian man from the United Kingdom who lived in an area of  
 2 Thailand known as the “child sex trafficking capital of the world.” Mr. Unsworth  
 3 cannot establish that Mr. Musk knew that his tweets were false or entertained serious  
 4 doubts as to their truth. *Christian Research*, 148 Cal. App. 4th at 91 (absence of  
 5 evidence of serious doubt as to the truth of the statements and failure to conduct  
 6 additional investigation was not sufficient to establish actual malice); *Rosenauro*, 88  
 7 Cal. App. 4th at 277 (same); *Annette F*, 119 Cal. App. 4th at 1167 (“Gross or even  
 8 extreme negligence will not suffice to establish actual malice”).

9       33. Mr. Unsworth cannot prove by clear and convincing evidence that Mr.  
 10 Musk’s August 28, 2018 tweet referencing Mr. Unsworth was made with actual  
 11 malice as it was sent after Mr. Musk received reports from an investigator regarding  
 12 Mr. Unsworth, and there is no evidence that Mr. Musk knew that these statements  
 13 were false or entertained serious doubts as to their truth. *See e.g., Reader’s Digest*,  
 14 37 Cal. 3d. at 252 (finding no actual malice where defendant published information  
 15 obtained from a third party source); *Christian Research*, 148 Cal. App. 4th at 91 (no  
 16 actual malice where information was purportedly obtained from an effectively  
 17 anonymous source in the postal inspector’s office). Mr. Unsworth’s defamation  
 18 claim as to the August 28, 2018 tweet fails as a matter of law.

19  
 20 DATED: September 16, 2019

Respectfully submitted,

21 QUINN EMANUEL URQUHART &  
 22 SULLIVAN, LLP

23 By /s/ Alex Spiro

24 Alex Spiro (admitted *pro hac vice*)  
 25 alexspiro@quinnemanuel.com  
 26 51 Madison Avenue, 22nd Floor  
 27 New York, New York 10010  
 28 Telephone: (212) 849-7000

*Attorneys for Defendant Elon Musk*